



Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Questions related to Proposed
City Charter Amendment Ballot
Measures

DATE: July 30, 2010

The following information is in response to the series of questions relating to the proposed interest arbitration and pension reform ballot measures that were asked during the Rules Committee meeting on July 28, 2010.

1. What are the pros and cons of having the retirement system, or a second tier retirement system, in the City Charter versus in an ordinance?

The City has a duty to provide a retirement system under Article XV of the City Charter. Sections 1504 and 1505 of the Charter provide for the minimum benefits for employees. Those Sections currently provide for the exclusion of certain officers and employees; but most full time employees are covered by the minimum benefits provisions. The City is obligated to abide by the Charter unless these provisions are changed by the voters. The details of the City's retirement plans reside in the Municipal Code.

Since the Charter can only be amended by the voters, the City Council cannot make unilateral changes to it. The City Council can make changes to ordinances, subject to any restrictions under applicable law.

In order to establish a second tier for most future employees, the City Council must currently abide by the minimum benefits provided under Sections 1504 and 1505, unless the City Charter is amended to

	<p>provide otherwise. Establishing the details of second tier in the Charter would limit the City Council's authority to make future modifications to the second tier plan, just as the current minimum benefits provisions in Sections 1504 and 1505 currently limit the City Council's authority.</p>
<p>2. How widespread are second tier retirement systems in California? Where are second tier systems being implemented?</p>	<p>San Francisco approved a Charter Amendment to provide another tier in its retirement system in June 2010.</p> <p>The City of Gilroy recently reached agreement with firefighters to include structural changes in the retirement formula for fire personnel and increased employee-paid retirement contributions. Specifically, the agreement reduces the retirement formula for new hires from 3% @ 55 to 2% @ 55, among other significant changes. In exchange, the City of Gilroy made various concessions, including dropping its bid to remove binding interest arbitration from its city charter.</p> <p>The City of Campbell and the Campbell Police Officers' Association recently agreed to a reduced retirement package for new officers, and the City is going to a two-tier pension system.</p> <p>There are many more cities in California that have either already implemented a second tier or are in the process of studying options.</p>
<p>3. Do City Charter Sections 1504 and 1505 need to be removed in order to provide a second tier retirement system for future employees?</p>	<p>No. The voters can approve an amendment to the Charter that allows for benefit changes for future employees. The City Council can also establish a second tier within the current minimum benefits structure. However, raising the minimum retirement age or modifying the 8-3 cost</p>

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	sharing structure in a second tier would not be possible without a change in the Charter.
4. Will each Memorandum of Agreement need to address retirement issues?	No. Some of the Memorandum of Agreements with bargaining units may contain provisions relating to retirement benefits, and those provisions may need to be deleted or amended in future Agreements if a second tier is ultimately adopted for future employees. However, the details of the retirement plans are in the Municipal Code and there is no legal requirement that the Memorandum of Agreements address retirement issues.
5. If the retirement system is defined by ordinance, how do we ensure that the City's contribution increases or decreases do not change on any given Tuesday?	The City Council can make changes to ordinances, subject to the limitations of the City Charter and any other applicable law, including any meet and confer requirements.
6. How many times has the City been in interest arbitration? How successful was it?	<p>An interest arbitration award was issued on August 3, 2007 by Jerrilou Cossack, the Chair of the Board of Arbitrators. The interest arbitration was between the City and International Association of Firefighters, Local 230 ("Local 230") over a successor Memorandum of Agreement.</p> <p>An interest arbitration award was issued on November 17, 1997 by Bonnie Bogue, the Chair of the Board of Arbitrators. The interest arbitration was between the City, the San Jose Police Officers' Association ("SJPOA"), and Local 230, involving impasse over retirement benefits.</p> <p>An interest arbitration award was issued on September 27, 1994 by Matthew Goldberg, the Chair of the Board of Arbitrators. The interest arbitration was between the City and Local 230 over a</p>

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	<p>successor Memorandum of Agreement.</p> <p>An interest arbitration award was issued on July 7, 1994 by Emily Maloney, the Chair of the Board of Arbitrators. The interest arbitration was between the City and SJPOA over a successor Memorandum of Agreement.</p> <p>An interest arbitration award was issued on April 14, 1991 by Norman Brand, the Chair of the Board of Arbitrators. The interest arbitration was between the City and Local 230 over a successor Memorandum of Agreement.</p> <p>Generally, the City has prevailed on issues and the unions have prevailed on issues.</p>
<p>7. Will the City be vulnerable if the 8-3 ratio is changed?</p>	<p>The ratio language in Sections 1504 and 1505 imposes a limitation on the contributions that can be required to be made by officers and employees for "normal costs," but does not impose a limitation on the contributions that the City Council can agree to make on behalf of the City. The City's vulnerability would only increase if the ratio were changed in the City Charter to reduce the employee's contribution rate.</p>


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